## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA SOUTHWESTERN DIVISION

LeRoy K. Wheeler,	)
Plaintiff,	ORDER ADOPTING REPORT  AND RECOMMENDATION
vs.	)
	) Case No. 1:11-cv-079
Robyn T. Schmalenberger, Patrick	)
Branson, and Leann K. Bertsch,	)
Defendants.	)

Plaintiff LeRoy K. Wheeler is an inmate at the North Dakota State Penitentiary ("NDSP"). On October 11, 2011, Wheeler filed a complaint alleging violations of 42 U.S.C. §§ 1981 and 1983. See Docket No. 8. Magistrate Judge Charles S. Miller, Jr. filed a Report and Recommendation on December 7, 2011. See Docket No. 9. This Court adopted the Report and Recommendation on February 21, 2012, allowing Wheeler to proceed with the retaliation claims to the extent they allege Wheeler was disciplined in retaliation for the exercise of his constitutional rights. See Docket No. 14.

On August 8, 2012, Wheeler filed a motion for preliminary injunction to enjoin the Defendants and all their subordinates from opening Wheeler's legal and privileged mail as to this case outside of his presence, whether incoming or outgoing. See Docket Nos. 31 and 32. Now before the Court is Judge Miller's Report and Recommendation filed on November 29, 2012, regarding the motion for preliminary injunction. See Docket No. 57. The Report and Recommendation provides in relevant part that "[w]hen deciding whether to grant an inmate preliminary injunctive relief, a court must consider (1) the threat of irreparable harm to the inmate; (2) the balance between the harm to the inmate and the harm that granting the injunction will inflict

on the nonmoving party; (3) the probability that the inmate will succeed on the merits; and (4) the

public interest." See Docket No. 57 (citing Goff v. Harper, 60 F.3d 518, 520 (8th Cir. 1995)). The

Report and Recommendation found none of these factors weigh in favor of granting a preliminary

injunction. See Docket No. 57. Judge Miller recommended that Wheeler's motion for preliminary

injunction be denied. See Docket No. 57.

Wheeler filed an objection to the Report and Recommendation on December 12, 2012. See

Docket No. 63. He argues that Judge Miller mischaracterized the case and took the position of the

Defendants, whereby injecting his own personal beliefs into the Report and Recommendation.

The Court has reviewed the entire record, the Report and Recommendation, Wheeler's

objections, and the relevant case law. The Court finds the Report and Recommendation to be

persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety

(Docket No. 57) and **DENIES** the "Motion for Preliminary Injunction" (Docket No. 32).

IT IS SO ORDERED.

Dated this 20th day of December, 2012.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge

**United States District Court** 

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